

Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

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Person To Contact:
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Telephone Number:

Refer Reply To:
CC:TEGE:EOEG:ET1
PLR-139444-09

Date:
February 26, 2010

Legend

Organization =
Church =
State X =
Year A =
Year B =
Date =

Dear :

This is in reply to your request dated July 17, 2009, submitted on your behalf by your authorized representative, for a ruling concerning whether Organization is an integral agency of the Church within the meaning of Treas. Reg. section 1.1402(c)-5(b)(2) such that rental allowances paid to managers, executives, supervisors, or administrators who are ordained, licensed or commissioned ministers employed by Organization can be excluded from gross income under section 107.

FACTS

According to the information you submitted, Organization was incorporated in Year A in State X to provide a home to orphan children. It is exempt from Federal income tax as an organization described in section 501(c)(3) of the Internal Revenue Code (Code). Organization provides a foster care residential program for children under the age of 18. Organization has three group homes and an active parent ministry. Organization also provides assistance to displaced single parent families.

The Church consists of a confederation of churches under congregational government. For theological reasons, the Church does not have a central governing body and does not term itself a denomination. However, congregations of the Church form a closely-

knit federation with common doctrines and goals, tied together by their conservative theology and traditions. Congregations cooperate with one another to establish and maintain “parachurch” institutions, including colleges, nursing homes, and charitable organizations, with which the Church has a symbiotic relationship.

The Church does not have a creed. Church rules and requirements are only those from the Bible. Numerous verses from the Bible speak of the requirement to provide for widows and orphans, and therefore it is a requirement of the Church, and all Church congregations provide support for orphans. Organization was founded by seven members of the Church, who were leaders of several Church congregations, to enable the Church to fulfill this requirement in an organized and effective manner by providing a home to orphan children. The by-laws of Organization state “[s]ince its formation in 1914, the [Organization] has been supported primarily by members of the [Church].” The mission statement of Organization “is to be a tool in the hands of supporting [Church congregations] and individual Christians to deliver God’s justice and mercy to children and families in need.”

Organization is governed by a self-perpetuating board of trustees, also termed directors, numbering between seven and fifteen. Organization’s by-laws require all trustees/directors, officers, and full-time permanent employees, to be members of the Church. Members are expected to attend services on a regular weekly basis and be involved in ministries of the Church. Organization amended its bylaws on Date expressly to require all trustees to be members in good standing of Church, confirmed by a letter from the congregation of which they are a member. You represent that the amendment to require the member to be in good standing reflects what has in fact been the practice throughout the life of Organization in selecting trustees.¹

Under the by-laws, trustees may be removed from the board for failure to be a Christian role model, for excessive absence from regular or special meetings of the board, or when in the judgment of the board removal would be in the best interest of the corporation. Organization amended its by-laws on Date expressly to also provide that any trustee may be removed from the board when they are no longer a faithful Christian in good standing. You represent that the amendment reflects what has been in fact practiced throughout the life of Organization in removing trustees. Vacancies on the board are filled by vote of the remaining trustees after consideration of the candidates’ completed questionnaire and interview with a member of the board.

Organization receives the vast majority (more than 95 percent in the past three fiscal years) of its financial support from the congregations of the Church, either from the congregation directly or from its members individually. Furthermore, in Year B, over

¹ Currently, all trustees are elders (the governing officers of Church congregations), deacons, preachers, or Sunday School teachers of their Church congregations. Accordingly, you indicate that the current trustees are either elders or under the direct control of the elders of the Church congregations.

700 Church congregations supported Organization, and a single fund raising activity of Organization in that year was supported by approximately 225 Church congregations. Organization prepares quarterly and annual reports. The quarterly reports are currently required by thirteen Church congregations that provide significant support and who are continually attentive to the affairs of Organization; the quarterly reports are also provided to certain individual donors that have requested them. Annual reports are distributed to every Church congregation and donor that supports Organization during such year. You state that failure to provide annual reports would result in a loss of substantially all of the funding of Organization, so that it would be unable to carry out its exempt purposes. Further, on Date, Organization amended its by-laws to require the Executive Director to publish and provide an annual financial statement for any supporting church or individual. You represent that the amendment reflects what has been in fact practiced throughout the life of Organization with respect to reporting of operations.

In the event of dissolution, the Articles of Incorporation require Organization's assets to be distributed to one or more of the congregations of the Church that qualify as exempt organizations under section 501(c)(2) of the Code, with no more than 10 percent of the assets distributed to any one congregation of the Church.

APPLICABLE LAW AND ANALYSIS

Section 107 of the Code provides that in the case of a "minister of the gospel", gross income does not include (1) the rental value of a home furnished to him as part of his compensation, or (2) the rental allowance paid to him as part of his compensation, to the extent used by him to rent or provide a home and to the extent such allowance does not exceed the fair rental value of the home, including furnishings and appurtenances such as a garage, plus the cost of utilities. Section 1.107-1(a) of the Income Tax Regulations (regulations) provides that:

In order to qualify for the exclusion, the home or rental allowance must be provided as remuneration for services which are ordinarily the duties of a minister of the gospel. In general, the rules provided in section 1.1402(c)-5 will be applicable to such determination. Examples of specific services the performance of which will be considered duties of a minister for purposes of section 107 include the performance of sacerdotal functions, the conduct of religious worship, the administration and maintenance of religious organizations and their integral agencies, and the performance of teaching and administrative functions at theological seminaries.

Consistent with the section 107 regulations, section 1.1402(c)-5(b)(2) provides that service performed by a minister in the exercise of his or her ministry includes: 1) the ministration of sacerdotal functions; 2) the conduct of religious worship; and 3) the control, conduct and maintenance of religious organizations (including the religious boards, societies, and other integral agencies of such organizations) under the authority of a religious body constituting a church or church denomination.

Section 1.1402(c)-5(b)(2)(ii) of the regulations provides that service performed by a minister in the control, conduct and maintenance of a religious organization relates to directing, managing, or promoting the activities of such organization. This section also provides that any religious organization is deemed to be under the authority of a religious body constituting a church or church denomination if it is organized and dedicated to carrying out the tenets and principles of a faith in accordance with either the requirements or sanctions governing the creation of institutions of the faith. The term "religious organization" has the same meaning and application as is given to the term for income tax purposes.

Section 1.1402(c)-5(b)(2)(iv) of the regulations provides in relevant part that if a minister is performing service for an organization which is operated as an integral agency of a religious organization under the authority of a religious body constituting a church or church denomination, all service performed by the minister in the control, conduct, and maintenance of such organization is in the exercise of his ministry.

In Rev. Rul. 62-171, 1962-2 C.B. 39, the Service held that ordained ministers of the gospel who teach or have positions involving administrative and overall management duties in parochial schools, colleges or universities which are integral agencies of religious organizations under the authority of a religious body constituting a church or church denomination are in the performance of their duties as ministers of the gospel for purposes of section 107 of the Code.

In Rev. Rul. 70-549, 1970-2 C.B. 16, the Service held that an ordained minister who was serving as chairman of the department of education of a college that was held to be "in practice" an integral agency of a church, and any minister serving on the faculty of the college as a teacher or administrator, was performing service "in the exercise of his ministry" within the meaning of sections 1.107-1 and 1.1402(c)-5 of the Income Tax Regulations. The Service held that the college was "in practice" an integral agency of a church. Although the church lacked a central governing body, the college was most rigidly and continuously governed and controlled by a board of directors who were, in turn, under the control of the elders of the church. The requirement in the college charter that each director be a member in good standing of a congregation of the church was found to be a method of indirect control. Similarly, every teacher was required to be a member of the church in good standing, and most students were members of the church. All subjects taught at the college were taught with emphasis on religious principles.

In Rev. Rul. 71-7, 1971-1 C.B. 282, the Service furnished guidance concerning whether a duly ordained minister, who is employed as a member of the faculty of a church-related college and whose duties do not include the conduct of religious worship or the ministration of sacerdotal functions, is performing services as a "minister of a church in exercise of his ministry." Rev. Rul. 71-7 provides that, in considering whether a minister serving on the faculty of a college is performing services in the exercise of his ministry, it is necessary to determine (a) whether the college employing him is itself a religious organization under the authority of a religious body constituting a church or church denomination or, (b) if the college is not such a religious organization, whether the college is operated as an integral agency of such a religious organization. The Service concluded that the college is an integral agency of a state convention of churches and that the state convention of churches is a religious organization under the authority of a religious body constituting a church or church denomination. Thus, the services performed by the ministers as heads of religious departments and as teachers and administrators on the faculty of the college constitute the performance of services in the exercise of their ministry.

In Rev. Rul. 72-606, 1972-2 C.B. 78, the Service considered whether a minister who served as the administrator of an old age home that was affiliated with a religious organization was eligible for the housing allowance provided under section 107 of the Code. The old age home designated an amount equal to the rent he actually paid as a rental allowance under section 107. The revenue ruling holds that the minister cannot exclude the rental allowance from his gross income under section 107 because the old age home is not an integral agency of a religious organization under the facts of ruling.

In Rev. Rul. 72-606, the Service established the following criteria to determine whether a church-related institution is an integral agency of a religious organization: (1) whether the religious organization incorporated the institution; (2) whether the corporate name of the institution indicates a church relationship; (3) whether the religious organization continuously controls, manages, and maintains the institution; (4) whether the trustees or directors of the institution are approved by or must be approved by the religious organization or church; (5) whether trustees or directors may be removed by the religious organization or church; (6) whether annual reports of finances and general operations are required to be made to the religious organization or church; (7) whether the religious organization or church contributes to the support of the institution; (8) whether, in the event of the dissolution of the institution, its assets would be turned over to the religious organization or church. The absence of one or more of these characteristics will not necessarily be determinative in a particular case.

Assuming for purposes of this letter ruling that Organization is not a religious organization within the meaning of section 1.1402(c)-5(b)(2)(ii), the relevant issue is whether Organization is an integral agency of a religious organization under the

authority of a religious body constituting a church or a church denomination under the criteria set forth in Rev. Rul. 72-606 and in accordance with other published guidance. The Church has no central governing body. Organization was founded by leaders of several Church congregations to enable the Church congregations to fulfill a requirement of the Church to care for orphans.

Similar to the situation in Rev. Rul. 70-549, the Church exercises indirect control over Organization via the board of trustees. In Rev. Rul. 70-549, the church had no central governing body to appoint directors, but the charter required each director to be a member in good standing of the church as determined by his congregation. In this instance, the Church does not appoint each member of the board that controls Organization; however, as expressed in its recent amendments to its bylaws, each trustee is to be a member in good standing of the Church, confirmed in writing by the congregation to which he belongs, and may be removed by the board, among other things, if he ceases to be a “Christian role model” or a “faithful Christian in good standing.” Accordingly, the Church exercises indirect control over Organization through its congregations and their member trustees, which is relevant to a number of criteria under Rev. Rul. 72-606.

Organization also meets the financial and reporting criteria set forth in Rev. Rul. 72-606. Organization is required to provide quarterly reports to thirteen Church congregations, and annual reports to all supporting churches and individuals. The amended by-laws confirm this requirement for distributing annual reports. Organization receives the vast majority of its financial support from Church congregations and their members. Finally, the Articles of Incorporation provide that in the event of dissolution Organization’s property would become the property of congregations of the Church.

After applying the criteria set forth in the rulings described above, we conclude that Organization is an integral agency of the Church. Since Organization is an integral agency of the Church, there is no need to determine separately whether the Church is itself a religious organization under the authority of a religious body constituting a church or a church denomination.

Under section 1.1402(c)-5 of the regulations, an ordained, commissioned or licensed minister who is performing services in the control, conduct or maintenance of an integral agency of a religious organization is engaged in performing services in the exercise of his ministry. Section 1.107-1 provides that these regulations apply in determining what duties constitute the duties of a minister of the gospel under section 107. Revenue Rulings 70-549 and 71-7 hold that ministers who serve on the faculty of a college that is an integral agency of a church, but do not perform any ecclesiastical duties are engaged in performing services in the exercise of their ministry and hence are eligible to exclude a portion of their compensation as a rental allowance under section 107. Rev. Rul. 62-171 holds that that ordained ministers of the gospel who teach or have positions involving administrative and overall management duties in parochial schools, colleges

or universities which are integral agencies of religious organizations are performing duties as ministers of the gospel for purposes of section 107 and hence are eligible to exclude a portion of their compensation as a rental allowance.

In the present case, Organization is an integral agency of the Church. Accordingly, ordained, commissioned, or licensed ministers who perform services in the control, conduct or maintenance of Organization are performing services in the exercise of their ministry for purposes of section 107. The ministers are therefore entitled to exclude from their gross income amounts that are properly designated as rental allowances under section 107 and the applicable regulations.

CONCLUSION

On the basis of the foregoing, we conclude that Organization is an integral agency of the Church such that properly designated rental allowances paid to managers, executives, supervisors, or administrators who are ordained, licensed or commissioned ministers employed by Organization can be excluded from gross income under section 107.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Pursuant to Revenue Procedure 2007-1, §3.01(11), the Service has not considered, and does not express any opinion regarding whether any individual employed by Organization is a minister of the gospel for federal tax purposes.

Except as specifically ruled on above, no opinion is expressed as to the application of any other provision of the Code to the facts described above.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

Enclosed is a copy of the letter ruling showing the deletions proposed to be made when the letter is disclosed under section 6110 of the Code.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your representative.

Sincerely,

Janine Cook
Branch Chief, Employment Tax Branch 1 (Exempt
Organizations/Employment Tax/Government
Entities)
(Tax Exempt & Government Entities)